

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

WILLIAM GEISSLER,

Plaintiff,

v.

TENNESSEE PEACE OFFICER STANDARDS
AND TRAINING COMMISSION,

Defendant.

Civil Action No. 11-1717

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11-1717

COMPLAINT

Plaintiff William Geissler, by and through undersigned *pro bono* counsel, files this action against Defendant Tennessee Peace Officer Standards and Training (“POST”) Commission to obtain declaratory and injunctive relief, statutory penalties, and judicial enforcement under the Tennessee Open Meetings Act, Tenn. Code Ann. §§ 8-44-101 *et seq.*

NATURE OF THE ACTION

1. This action arises out of Defendant’s serial violations of the Tennessee Open Meetings Act (“the Act”) that occurred throughout the creation and approval of a four-page document entitled “Citizenship Status: A Policy from the Tennessee POST Commission” (“Policy”).¹

2. Members of Defendant POST Commission met sometime between June 2010 and September 2010 without adequate public notice and voted to put together an “Immigration Committee.” The Committee was charged with the task of working with experts and stakeholders

¹ A true and correct copy of the Policy is attached to this Complaint as Exhibit “A”.

to formulate a POST Commission policy for “verifying citizenship” pursuant to a new state law, Public Chapter 1112 of 2010.²

3. During August, September and October of 2010, the Immigration Committee (“Committee”) deliberated both in person and through e-mail. It kept no minutes and gave no notice of its meetings and assemblages. The Committee’s deliberations included drafting proposed language that ultimately formed the basis of the Policy that Defendant adopted in October 2010. Only select law enforcement officials and organizations were afforded access to the Committee’s deliberations on the proposed Policy. Once those select law enforcement personnel and organizations “approved” or recommended the proposed Policy in meetings which also did not comply with the Tennessee Open Meetings Act, it was added without public notice to a POST Commission meeting agenda for October 2010. Defendant POST Commission met on October 15, 2010 without adequate public notice. No members of the public were present, despite intense interest by numerous organizations and individuals statewide. Brian Grisham, Executive Secretary of Defendant POST Commission, introduced the Policy in final form during the October 15, 2010 meeting. A motion to adopt the Policy passed without revision or debate.

4. Since its passage, the Policy has impacted the daily operations and budgets of nearly every jail in the State of Tennessee. Its requirements have necessitated expenditures of hundreds of thousands of dollars by local governments in unfunded compliance costs.

5. The Policy has been implemented by jailers to take into custody and delay the release of thousands of individuals across the State, including United States citizens, legal permanent residents, and other non-citizens residing in or traveling through Tennessee with valid immigration status.

² See T.C.A. § 40-7-123(a).

6. Plaintiff seeks a declaration, pursuant to Tenn. Code Ann. § 8-44-105, that the “Policy” is void because Defendant violated the Open Meetings Act in creating it. Plaintiff also seeks an injunction preventing the Policy’s continued implementation at all jails where it is currently in force, as well as other relief provided for by statute.

JURISDICTION AND VENUE

7. Jurisdiction over this action lies pursuant to Tenn. Code Ann. § 8-44-106(a), Tenn. Code Ann. §§ 29-14-101 *et seq.*, and Tenn. R. Civ. P. 65. Venue is proper in this Court under Tenn. Code Ann. §§ 20-4-101 *et seq.*

PARTIES

8. Plaintiff William Geissler is a citizen and resident of Tennessee.

9. Defendant Tennessee Peace Officer Standards and Training Commission is a regulatory agency of the State of Tennessee within the Department of Commerce and Insurance. The POST Commission is an eighteen-member governing body composed of local law enforcement personnel, state legislators, the Tennessee Attorney General and Reporter, at least three citizens not connected with law enforcement, and other appointees. The Commission is charged under Tennessee Code Annotated § 38-8-104 with the establishment, implementation, and maintenance of uniform standards for the employment, training and administration of supplemental incomes of all local law enforcement officers in Tennessee and certain state law enforcement agencies. T.C.A. § 38-8-104 gives the POST Commission the authority to make decisions for and recommendations to public bodies on policy and administration.

FACTS

10. Public Chapter 1112 of 2010 became law on July 6, 2010 and went into effect on January 1, 2011. It requires Defendant POST Commission to “develop a standard written

procedure for verifying the citizenship status of individuals who are arrested, booked, or confined for any period in a county or municipal jail or detention facility and reporting to the appropriate Immigration and Customs Enforcement (ICE) Detention and Removal Operations field office those individuals who may be in violation of the Immigration and Nationality Act[.]”

11. Public Chapter 1112 of 2010 mandates that all jailers in the State of Tennessee utilize the “standard written procedure” the POST Commission creates. This legislative mandate is subject to limited exceptions for jurisdictions with certain existing agreements with ICE.

12. No later than September 2010, Defendant POST Commission voted or otherwise agreed and decided to empower an Immigration Committee of “experts” who would be responsible for creating the policy required by state law and recommending that policy to the full POST Commission for approval.

13. Individuals who were on the Committee or who otherwise participated in or were privy to its deliberations include, but are not limited to: Daron Hall, Sheriff of Davidson County, Karla Weikal, Davidson County Sheriff’s Office, Tom Davis, Davidson County Sheriff’s Office, R. Gentry, Davidson County Sheriff’s Office, Sergeant Terry Wilshire, Knox County Sheriff’s Office, Chief Deputy Dusty Rhodes, Williamson County Sheriff’s Office, Mike Dobbins, Williamson County Sheriff’s Office, Johnny Welch, POST Commission Investigator, Stan Murphy, POST Commission Investigator, Brian Grisham, Executive Secretary of Defendant POST Commission, and Patrick Merkel, Chief Counsel for Fire Prevention and Law Enforcement, Tennessee Department of Commerce and Insurance.

14. Two or more members of this Committee met or assembled at least once without public notice on or before September 7, 2010 to discuss the creation of the draft policy.

15. Acting on behalf of the Committee, Sgt. Wilshire created an email group of Committee members on or around September 7, 2010.

16. On or before September 7, 2010, the Committee agreed to contact the Tennessee Correctional Institute (“TCI”) and work with TCI Staff to develop a training module that would outline the Committee’s final guidelines.

17. Sgt. Wilshire emailed the Committee’s email group informing them of these actions on September 7, 2010.

18. Prior to September 14, 2010, Sgt. Wilshire and the Committee circulated a draft policy for consideration, review, and deliberation.

19. On September 14, 2010, Sgt. Wilshire circulated to the Committee by email a newer version of the draft policy for the Committee’s consideration, review, and deliberation.

20. The Wilshire draft includes the substantive and procedural provisions that ultimately formed the basis of the Policy adopted by Defendant POST Commission.

21. The drafter of a subsequent version of the proposed policy informed Defendant POST Commission’s Executive Secretary, Brian Grisham, on September 14, 2010 that when writing his draft, he “tried to base it heavily on Knox County’s.” The Knox County draft to which the drafter was referring was the one circulated by Sgt. Wilshire to the Immigration Committee.

22. On September 16, 2010, after reviewing the draft that emerged from the Committee, POST Executive Secretary Grisham stated, “It looks really good. No changes from me.”

23. Secretary Grisham indicated on September 16, 2010 that he or another State employee familiar with the Immigration Committee’s deliberation and proposals would tell

Defendant POST Commission where the Committee stood during Defendant's scheduled monthly meeting the following day, September 17, 2010.

24. Between September 14, 2010 and October 4, 2010, multiple Committee members reviewed, made comments, and suggested improvements to the Committee's draft of the policy.

25. As of October 5, 2011, Sgt. Wilshire informed Counsel for Defendant that he considered the work of the Committee "pretty much done."

26. On October 6, 2011, Chief Deputy Dusty Rhodes of the Williamson County Sheriff's Office presented the Immigration Subcommittee's draft to the Executive Board of the Tennessee Sheriff's Association ("TSA"). The TSA's Executive Board voted unanimously to endorse the policy to Defendant POST Commission.

27. Upon information and belief, the October 6, 2011 meeting of the Executive Board of the Tennessee Sheriff's Association was not open to the public.

28. On or around October 7, 2011, the Model Policy on Citizenship Status was added to Defendant POST Commission's October meeting agenda as "New Business."

29. No public notice was provided by the Defendant that the proposed Policy was on the October agenda.

30. The draft approved by the Immigration Subcommittee was circulated to POST Commissioners prior to or on the day of the Commission's October 15, 2010 meeting.

31. Secretary Grisham presented the Policy to the ten Commissioners present at the October 15, 2010 POST Commission meeting. Secretary Grisham described the Committee's formation, purpose, and results of the Immigration Committee. He then presented the Committee's recommendations. A motion to approve the Policy carried.

CAUSE OF ACTION:

Violation of the Tennessee Open Meetings Act

32. Plaintiff hereby adopts and incorporates by reference the allegations contained in all paragraphs above.

33. Defendant POST Commission's creation, deliberation and approval of the Policy violated the Tennessee Open Meetings Act in the following ways:

- a. Failing to provide adequate public notice of the POST Commission Meeting on October 15, 2010, during which the "Policy on Citizenship Status" – an issue of pervasive importance to immigrant communities, civil rights organizations, and the public at large – was presented and voted upon, in violation of Tenn. Code Ann. § 8-44-103(a);
- b. Failing to provide adequate public notice of at least one special meeting of the Immigration Committee, whose deliberation, drafting, and policy recommendations would determine an issue of pervasive importance to immigrant communities, civil rights organizations, and the public at large, in violation of Tenn. Code Ann. § 8-44-103(b);
- c. Allowing the Immigration Committee of the POST Commission to conduct secret meetings not open to the public, in violation of Tenn. Code Ann. § 8-44-102(a);
- d. Failing to keep minutes of the Immigration Committee of the POST Commission's deliberations, in violation of Tenn. Code Ann. § 8-44-104(a);

- e. Allowing the Immigration Committee of the POST Commission to use informal assemblages and electronic communications of more than two members of the POST Commission or Immigration Committee to decide or deliberate public business – to wit, the draft and final language of the Policy – in circumvention of the spirit or requirements of the Open Meetings Act, in violation of Tenn. Code Ann. § 8-44-103(c);

34. The Policy was an action taken at meetings held in violation of the Open Meetings Act, and is consequently void and of no effect, pursuant to Tenn. Code Ann. § 8-44-105.

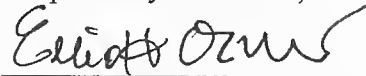
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grant the following relief:

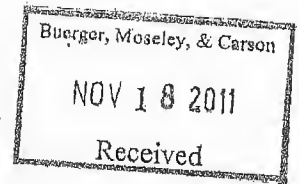
- (a) Issue a Declaratory Judgment declaring the Policy void and of no effect, pursuant to T.C.A. §§ 8-44-105 and 8-44-106(a);
- (b) Issue a Temporary and then a Permanent Injunction enjoining Defendant from relying upon the present Policy, and from further violating the Open Meetings Act, pursuant to T.C.A. § 8-44-106(c), and requiring Defendant to immediately send notice, to be approved by this Court, to all county and city jails currently implementing the Policy until such time as Defendant may approve one in conformity with the Open Records Act;
- (c) Retain jurisdiction of the parties and the subject matter for one year and order Defendant to report semiannually to the Court of their compliance, pursuant to T.C.A. § 8-44-106(d); and
- (d) Grant Plaintiff such other relief as the nature of his claims may require.

DATED this the 13th day of December, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elliott Ozment", written over a horizontal line.

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Citizenship Status
A Policy from the Tennessee POST Commission

1. Purpose. This model policy was developed pursuant to Public Chapter 1112 of 2010, which required the POST Commission to "develop a standard written procedure for verifying the citizenship status of individuals who are arrested, booked, or confined for any period in a county or municipal jail or detention facility and reporting to the appropriate Immigration and Custom Enforcement (ICE) Detention and Removal Operations field office those individuals who may be in violation of the Immigration and Naturalization Act..."

The act requires the keeper of the jail to utilize the POST Commission's standard procedure to verify the citizenship status of individuals who are arrested, booked, or confined for any period in a county or municipal jail or detention facility and report to ICE those individuals who are in violation of the Immigration and Naturalization Act or if such status cannot be determined.

2. Definitions.

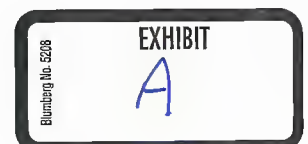
Booking Package: Charge information, arrest report, any response from LESC via NCIC, a photo of the individual, and fingerprint response from TBI and FBI indicating State ID and FBI numbers.

FBI: Federal Bureau of Investigation

ICE: United States Department of Homeland Security Immigration and Custom Enforcement.

LESC: ICE's Law Enforcement Support Center which provides immigration status and identity information to local, state and federal law enforcement agencies on aliens suspected, arrested or convicted of criminal activity and federal immigration violations.

NCIC: FBI's National Crime Information Center which provides a computerized index of criminal justice information (i.e. - criminal record history information,



fugitives, stolen properties, missing persons) to Federal, state, and local law enforcement and other criminal justice agencies.

Secure Communities: Partnership between the county or municipal jail or detention facility and ICE to identify, detain, and remove criminal aliens from the United States. Under the Program, ICE monitors all arrestee fingerprints submitted for matches to ICE criminal alien database.

TBI: Tennessee Bureau of Investigation

3. Policy Statement. The POST Commission recommends all county and municipal jails or detention facilities that are not operating under a memorandum of understanding with the United States Department of Homeland Security concerning enforcement of federal immigration laws or participating in United States Immigration and Customs Enforcement Criminal Alien Program (CAP) to participate in the United States Department of Homeland Security's Secure Communities Program.

Under the Secure Communities Program, fingerprints submitted to NCIC for matches are also run against the ICE's LESC database of aliens suspected, arrested or convicted of criminal activity and federal immigration violations. Participation in this Program will provide an additional verification of citizenship status. This Program is expected to be available to in all Tennessee counties in the next two (2) years.

The POST Commission has developed the following procedure for verifying the citizenship status of individuals who are arrested, booked, or confined for any period in a county or municipal jail or detention facility and reporting to the local ICE field office those individuals who may be in violation of the Immigration and Naturalization Act. This procedure should be incorporated regardless of whether a county or municipal jail or detention facility participates in the Secure Communities Program.

4. Procedures.
 - A. During the course of processing, while gathering personal information, the individual shall be asked the following two (2) questions:
 - i. What is your place of birth?
 - ii. Are you a citizen of the United States?
 - B. If the individual indicates he/she was born in a foreign country and/or states he/she is not a citizen of the United States then a booking package shall be forwarded to the local ICE field office for investigation.

- C. The individual's file will be marked to indicate that this procedure has been initiated and a response is pending from ICE.
 - D. If at any time during this procedure, the individual's charges are released by bond or court order, prior to the release of the individual, the individual's file will be taken to a designated Supervisor for review.
 - i. If no response has been received from ICE, the Supervisor shall take steps to contact the local ICE field office for final determination of need of a detainer.
 - ii. If ICE determines no detainer is required, a copy will be placed in the individual's file.
 - iii. If detainer is requested from ICE, then a copy will be placed in the individual's file and a detainer issued and booked.
 - 1. Upon release of all local charges, ICE will be notified that the individual is ready to be transferred to their custody. ICE will have 48 hours (not including weekends or holidays) to take custody of the individual.
 - 2. If ICE has not taken custody within 48 hours, the Supervisor shall contact the local ICE field office for a decision for immediate pick up or release.
5. Immigration and Custom Enforcement Detention and Removal Operations field offices.
- A. Knoxville Office (865) 539-0921
 - i. Anderson, Blount, Campbell, Carter, Claiborne, Cocke, Grainger, Greene, Hamblen, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier, Sullivan, Unicoi, Union and Washington
 - B. Chattanooga Office (423) 553-1716
 - i. Bedford, Bledsoe, Bradley, Coffee, Franklin, Grundy, Hamilton, Lincoln, Marion, McMinn, Meigs, Moore, Polk, Rhea, Sequatchie, Warren and Van Buren
 - C. Nashville Office (615) 736-2036
 - i. Cannon, Cheatham, Clay, Cumberland, Davidson, Dekalb, Dickson, Fentress, Giles, Hickman, Houston, Humphreys, Jackson, Lawrence,

Lewis, Macon, Marshall, Maury, Montgomery, Overon, Pickett,
Putnam, Robertson, Rutherford, Smith, Stewart, Sumner, Trousdale,
Wayne, White, Wilson and Williamson

D. Memphis Office (901) 544-0266

- i. Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson,
Hardin, Hardeman, Haywood, Henderson, Henry, Lake, Lauderdale,
Madison, McNairy, Obion, Perry, Shelby, Tipton and Weakley